

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

SAMUEL YATES,

Plaintiff,

v.

LT. JAMES DILDAY, et al.,

Defendants.

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Case No. 3:09-cv-00260-DRH-DGW

ORDER SETTING PAVEY HEARING

On July 31, 2009, the Plaintiff, a prisoner acting *pro se*, filed an Amended Complaint alleging Defendants acted with deliberate indifference to a serious medical need in violation of the Eighth Amendment (Doc. 5). On March 30, 2010, Defendants Tyler Bradley and James Dilday¹ filed a Motion to Dismiss asserting that Plaintiff failed to exhaust his administrative remedies prior to filing suit, in violation of 42 U.S.C. §1997e(a) (Docs. 28, 29).

The Seventh Circuit holds that discovery on the merits should not begin until the question whether a plaintiff has exhausted his administrative remedies within the meaning of the Prison Litigation Reform Act has been resolved. *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008). In an attempt to comply with *Pavey* as closely as possible, the Court will follow the procedure outlined below.


1. The parties are granted leave to conduct discovery related exclusively to the issue of exhaustion of administrative remedies.

¹ The Court has taken notice that the last name of Defendant James Dilday has been misspelled in the case caption and in various pleadings. The Court hereby DIRECTS the Clerk of the Court to change the case caption to reflect the correct spelling of Defendant James Dilday's name.

2. The undersigned magistrate judge will hold a hearing on the question whether Plaintiff has exhausted his administrative remedies on **January 14, 2011, at 2:00 p.m.** in the East St. Louis Federal Courthouse. Plaintiff shall participate by videoconference. Defendants shall appear in person. The parties may submit briefs, affidavits, and exhibits relevant to the question of exhaustion. Briefs, affidavits, and exhibits are due **January 7, 2011.**
3. The undersigned will make a written Report and Recommendation to the presiding United States District Judge recommending a factual determination on the exhaustion issue based on the evidence presented at the hearing.

IT IS SO ORDERED.

DATED: November 23, 2010



DONALD G. WILKERSON
United States Magistrate Judge